

The opinion in support of the decision being entered today was **not** written for publication in a law journal and is **not** binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS V. MOSER et al.

Appeal No. 1998-2838
Application No. 08/591,801

ON BRIEF

Before CALVERT, NASE, and GONZALES, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 2, 5, 6, 10-14 and 17-20. Claims 3, 4, 7-9, 15 and 16 have been objected to as depending from a non-allowed claim. No claim has been canceled.

We REVERSE.

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BACKGROUND

The appellants' invention relates to bicycles for exercise and/or therapeutic purposes (specification, p. 1). A substantially correct copy of the claims under appeal is set forth in the appendix to the appellants' brief.¹

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Lin 1987	4,705,493	Nov. 10,
Pitzen et al. 1990 (Pitzen)	4,923,193	May 8,
Taylor 1996	5,496,238	March 5,

(filed Aug. 19, 1993)

Claims 1, 2, 5, 6, 13, 14 and 17-20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Taylor in view of Lin.

¹ We note that the word "identical" was misspelled in claims 1 and 13.

Claims 10-12 stand rejected under 35 U.S.C. § 103 as being unpatentable over Taylor in view of Lin, as applied above, and further in view of Pitzen.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 9, mailed January 21, 1998) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 8, filed October 24, 1997) and reply brief (Paper No. 10, filed March 17, 1998) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will

not sustain the examiner's rejection of claims 1, 2, 5, 6, 10-14 and 17-20 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

The appellants argue that the applied prior art does not establish a prima facie case of obviousness. Specifically, the appellants assert that the claimed control means as recited in the independent claims on appeal (i.e., claims 1 and 13) is not suggested by the applied prior art. We agree.

Independent claim 1 includes the recitation of "control means for providing isokinetic pedaling resistance throughout the cycle of rotation of said pedals." Independent claim 13 includes the recitation of "control means for providing isotonic pedaling resistance throughout the cycle of rotation of said pedals." However, these limitations are not suggested by the applied prior art for the reasons set forth in the appellants' brief (pp. 5-7) and reply brief (pp. 2-6). In that regard, Taylor does not teach or suggest a control means for providing isotonic or isokinetic pedaling resistance throughout the cycle of rotation of the pedals. To the contrary, Taylor teaches that his physical conditioning apparatus includes a resistance producing means for resisting upward movement of the foot pedals but producing little or no resistance to downward movement of the foot pedals.

It is our opinion that the examiner's determination (answer, p. 5) that Taylor's teachings at column 14, lines 34-39,² clearly suggest the upward and downward pedal movement

² Column 14, lines 34-39, of Taylor provide "If found
(continued...)"

resistances can be identical is in error. This passage of Taylor clearly teaches that the resistance to the upward movement of pedals 264, 266 is always greater than the resistance to the downward movement of pedals 264, 266 even when stop means are provided to limit the relative angular movements of manual control knobs 308, 308'.

Furthermore, the examiner made determinations (answer, pp. 4-5) that Lin discloses (1) an exercise device which utilizes an isokinetic resistance mechanism, and (2) friction wheels, i.e., flywheels having adjustable braking bands. We have reviewed fully the disclosure of Lin and fail to find any support whatsoever for these determinations of the examiner. In fact, Lin does not disclose any resistance or braking mechanism for his exercise device.

²(...continued)
desirable or necessary, stop means may be provided to so limit the relative angular movements of manual control knobs 308, 308', respectively, that the resistance to the upward movement of pedals 264, 266 is always greater than the resistance to the downward movement of pedals 264, 266."

In our view, the only suggestion for modifying Taylor to meet the above-noted limitations stems from hindsight knowledge derived from the appellants' own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). It follows that we cannot sustain the examiner's rejections of claims 1, 2, 5, 6, 10-14 and 17-20.³

CONCLUSION

³ We have also reviewed the reference to Pitzen additionally applied in the rejection of claims 10-12 but find nothing therein which makes up for the deficiencies of Taylor and Lin discussed above.

To summarize, the decision of the examiner to reject claims 1, 2, 5, 6, 10-14 and 17-20 under 35 U.S.C. § 103 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	
)	
)	BOARD OF PATENT
JEFFREY V. NASE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JOHN F. GONZALES)	
Administrative Patent Judge)	

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